

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

ADIDAS AMERICA, INC., et al.,

Plaintiffs,

vs.

No. CV01-1655 RE
(Lead Case)
RELATED CASE to
CV03-1116 RE

PAYLESS SHOESOURCE, INC.,

Defendant.

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CONFIDENTIAL VIDEOTAPED DEPOSITION OF

PETER C. KNOPS, ESQUIRE

June 12, 2007  
10:11 a.m.

Lathrop & Gage  
2345 Grand Boulevard, Suite 2800  
Kansas City, Missouri

Lea Ann Martin, CSR, RPR, CCR

1 -- and, you know, and I reviewed that.

2 Q. Do you specifically remember  
3 reading the agreement?

4 A. I believe -- what I remember is  
5 reading the pertinent language as it pertained  
6 to stripes, the configuration of the stripes  
7 and how it was applied to the shoes at issue  
8 in the case, so I believe from that that I  
9 would have read the agreement.

10 Q. And what do you recall about the  
11 terms of the agreement?

12 A. Well, I don't recall exactly  
13 everything, but I remember that it talked  
14 about -- it had several -- provided several  
15 different categories. One of the categories  
16 was three-stripe shoes, another category was  
17 having a certain number of stripes or,  
18 perhaps, just more than one stripe that had  
19 serrated edges. And then I believe the  
20 agreement dealt with some other configurations  
21 but I can't recall those at this point in  
22 time.

23 Q. And what do you recall being the  
24 terms of the agreement regarding three  
25 stripes?

1           A.       I believe the terms of the  
2       agreement were that Payless should not make  
3       shoes with three stripes that are parallel.

4           Q.       And what do you recall about the  
5       agreement with respect to having a number of  
6       stripes and serrations?

7           A.       That Payless should not make shoes  
8       that have -- that could be two or more  
9       stripes that have serrations and are parallel.  
10      That's the best of my recollection.

11          Q.       And do you recall any other terms  
12      of the agreement?

13          A.       I don't recall the specifics of  
14      any terms of the agreement -- of any other  
15      terms of the agreement.

16          Q.       When you mentioned -- first  
17      mentioned the agreement you said it provided  
18      guidelines. Was it your opinion that the  
19      agreement provided guidelines?

20                   MR. BARNARD: Object to the form.  
21                   You can answer.

22          A.       I don't really have an opinion on  
23      that. I know it -- from reading the agreement  
24      it provided for us adidas' position with  
25      respect to their rights and that's how I used

1 it in my product review.

2 Q. (By Mr. Brewster) Did the  
3 memorandum provide that the -- did the  
4 memorandum express that the agreement provided  
5 guidelines?

6 A. Not that I recall.

7 Q. Did you operate with any guidelines  
8 from the 1994 agreement other than not doing  
9 three parallel stripes and not doing two or  
10 more parallel stripes with serrations?

11 MR. BARNARD: Object to the form.  
12 You can answer.

13 A. I don't recall if it -- if it  
14 gave us other guidelines besides that. I  
15 believe that it also had -- had pointed out  
16 some specific lots that Payless were not to  
17 proceed with and thus they would -- we would  
18 not have remade those lots should they come  
19 back in style -- that style. It would not  
20 have made similar designs as were listed in  
21 there.

22 Q. (By Mr. Brewster) Now, did you  
23 ever advise anyone at Payless that they were  
24 allowed to use two or four parallel stripes  
25 as long as they weren't serrated, a

1           A.       We had notebooks of issued patents,  
2       utility and design I believe separated, and  
3       then we had a section of registered  
4       trademarks.

5           Q.       When you were responsible for  
6       updating the material, how did you go about  
7       updating the trademark registrations?

8           A.       I don't know if there was a  
9       standard way that I did this, but I know  
10      that I relied on the quarterly publication of  
11      -- of Footwear World that listed patents and  
12      trademarks that companies got. I also when  
13      searching became more prevalent, and I can't  
14      put a time when that occurred, I don't  
15      believe that was right at the beginning, I  
16      would update it through that way, or I would  
17      have people who worked for me who were  
18      compiling who would compile patents for a  
19      particular company or in at least one case we  
20      outsourced the work.

21          Q.       Have -- have you ever attended any  
22      footwear industry conventions?

23          A.       No.

24          Q.       Putting aside meetings that were  
25      legal meetings or the shoe review meetings

1 themselves, did you attend any Payless buyer  
2 meetings regarding footwear?

3 A. Yes.

4 Q. And what meetings did you attend?

5 A. I attended meetings for the buyers  
6 that instructed them on the shoe review  
7 process generally and intellectual property  
8 generally.

9 Q. And were you the person responsible  
10 for presenting at those meetings?

11 A. At times.

12 Q. Were there materials prepared to  
13 provide to the buyers for those meetings?

14 A. There were materials prepared. I  
15 don't believe they were provided to the  
16 buyers.

17 Q. You don't recall -- recall any  
18 written material that went to the buyers?

19 A. We may have handed out a shoe or  
20 product review request form, but other than  
21 that I'm not aware, I don't recall handing  
22 out any other material to the buyers.

23 Q. How many times did you conduct  
24 this -- how many times did you attend a  
25 program like this?

1 A. I don't recall exactly.

2 Q. Was it annually?

3 A. No.

4 Q. More often?

5 A. If I can skip back one question,  
6 when you say "was it annually," I did not  
7 attend annually from the beginning when I  
8 started shoe reviews until when I left  
9 Lathrop & Gage. When I started attending  
10 this meeting, I believe it was at least  
11 annually.

12 Q. When you were the presenter what  
13 were your instructions regarding the shoe  
14 review process?

15 A. My instructions were to present  
16 what was -- what we needed from the buyers  
17 to do our review, what they should expect  
18 from a review, and what the review entailed.

19 Q. And what did you tell the buyers  
20 that you needed?

21 A. We -- we would like to have the  
22 information that they had which may include  
23 the shoe that they -- that they would propose  
24 to make, if there was a shoe that they were  
25 interpreting, that shoe, any other shoe that

1 may have any inspiration to the proposed  
2 shoe, and any rights or claims that they were  
3 aware of that may be involved in -- that may  
4 -- that may surround that particular shoe.  
5 If they were aware of a lawsuit or of  
6 another retailer or other discount retailer  
7 making the shoe, we would like to be aware  
8 of that.

9 Q. And what did you tell them that  
10 they should expect?

11 A. This evolved from over time.  
12 Typically, I mean, I think the common theme  
13 was that they should expect a -- a report  
14 back letting them know the -- the risk  
15 assessment that we gave the shoe, any  
16 suggestions we may have to lower that risk  
17 assessment and they can expect their shoe  
18 back and they would not -- they would not be  
19 getting anything in writing themselves.

20 Q. And how did that evolve over the  
21 time that you were involved in making that  
22 presentation?

23 A. I think it evolved to some extent  
24 that we tried to be -- have a faster  
25 turnaround time so that they could move their



1 process along, and I think it just became  
2 more formalized into what they -- how they  
3 could supply us with this information and how  
4 it would be returned to them.

5 Q. And how did you describe what the  
6 review entailed?

7 MR. BARNARD: Object to the form.

8 You can answer.

9 A. We described that we would be  
10 looking for -- at a shoe for any potential  
11 trademark issues, trade dress issues, utility  
12 patent issues, design patent issues, copyright  
13 issues.

14 Q. (By Mr. Brewster) Is there  
15 anything else that you told the buyers that  
16 the review entailed?

17 A. I think we also told them that we  
18 try to keep abreast of ongoing litigation in  
19 the area to help assess our -- the risk  
20 rating that we would ascribe the shoe. That  
21 generally is what we told them that it  
22 entailed.

23 Q. When you told them what to expect  
24 and you said they should expect a report with  
25 a risk assessment, what levels of risk

1 on the -- as a registration, and this is the  
2 one that I thought it brought to mind.

3 Q. And that's PSS 99983?

4 A. That is correct.

5 Q. The reference under Trademark  
6 Review goes on to say, Use of four stripes  
7 is okay per agreement.

8 What agreement are you referencing?

9 A. That would be the 1994 settlement  
10 agreement between Payless and adidas.

11 Q. And in conducting the shoe review  
12 did you review the '94 agreement?

13 A. I can't recall if I reviewed the  
14 agreement right before giving this review. I  
15 had reviewed the agreement prior to conducting  
16 this review and I was aware of the contents  
17 of the agreement.

18 Q. Is it your testimony that you had  
19 read the actual agreement itself prior to  
20 giving this shoe review?

21 A. As -- as I testified to earlier, I  
22 believe that I read at least a memorandum  
23 that gave a -- guidelines from the agreement  
24 as well as I believe I read the pertinent  
25 sections of the agreement as it pertained to

1       adidas' rights.

2           Q.       And I understand you read the memo  
3       but do you recall reading the agreement  
4       itself separately?

5           A.       I can't recall pulling out an  
6       entire agreement and reading it from beginning  
7       to end. I do recall reading pertinent  
8       sections that I believe were from the  
9       agreement.

10          Q.       And were those pertinent sections  
11       referenced in the memo, is that where you saw  
12       them?

13          A.       We had a -- an agreement book that  
14       I could reference to when I was doing shoe  
15       reviews that had agreements from companies  
16       that had at some point made an agreement with  
17       Payless. One of those was the Payless -- or  
18       May and adidas agreement. Before the actual  
19       agreement is -- was a memorandum I believe  
20       from Steve Horace which discussed the  
21       agreement and after that was at least some  
22       section of the agreement that I read that  
23       pertained to adidas' rights. I believe from  
24       my recollection that's the best I can say.

25          Q.       Based on your recollection, how

1 MR. BARNARD: Object to the form.

2 You can answer.

3 A. If there were -- was a design  
4 element that they were going to be using or  
5 that had been used on shoes other than the  
6 one that had been submitted to us, that  
7 review might purport to effect that shoe.  
8 Thus, if the buyer when he was told that we  
9 had an issue with that certain design element  
10 may state, "we're using that element on other  
11 shoes," and I would say, "Well, let's bring  
12 those shoes back into review so we can take  
13 a look at those."

14 Q. Let's assess that in the context  
15 of Exhibit 427. Do you recognize this as a  
16 shoe review that you participated in?

17 A. It appears that I was -- I  
18 participated in this shoe review, but I don't  
19 recall it independently.

20 Q. In this situation the competitor  
21 shoe that's identified is a Diesel shoe; is  
22 that correct?

23 A. Yes.

24 Q. In conducting a shoe review such  
25 as this where the competitor shoe had

1 parallel stripes, did you also assess any  
2 rights that adidas might have in connection  
3 with those parallel stripes?

4 A. I would have considered that adidas  
5 -- if I felt like adidas had a right to the  
6 -- in this shoe that we were making, I would  
7 have brought it up.

8 Q. And the fact that it's not  
9 reflected on -- on this shoe review means  
10 that you didn't have any such reaction?

11 A. I did not have concern with this  
12 two-stripe shoe that did not -- as I was  
13 aware was not interpreting an adidas style.  
14 I did not have that concern with adidas'  
15 rights.

16 Q. In connection with this review did  
17 you even consider adidas' rights?

18 A. I considered adidas' rights every  
19 time I saw stripes on a shoe that were  
20 parallel or substantially parallel.

21 Q. In this particular case there is a  
22 rating assigned under Trade Dress Review, it  
23 says low to moderate --

24 A. Uh-huh.

25 Q. -- correct?

1 A. That's correct.

2 Q. And is that a trade dress elements  
3 of the Diesel shoe; is that correct?

4 A. I would have been looking at the  
5 trade dress of the Diesel shoe, that's  
6 correct.

7 Q. Did you conduct any review in  
8 particular with any -- in connection with any  
9 trademark as opposed to trade dress?

10 A. Yes.

11 Q. And what trademark did you assess?

12 A. It would have been down at the  
13 Risk Rating All Factors. It was marked low  
14 to moderate, so we would have felt it was  
15 low to moderate risk rating.

16 Q. Sorry, in this particular review  
17 did you undertake any trademark review in  
18 this case?

19 MR. BARNARD: Object to the  
20 question as asked and answered.

21 A. And I would reiterate, yes.

22 Q. (By Mr. Brewster) So the fact  
23 that there's no comments under Trade Mark  
24 Review doesn't mean that you didn't conduct a  
25 trademark review analysis?

1 reaction might be to this shoe?

2 A. I don't think so.

3 Q. This review occurred while this  
4 litigation was pending, correct?

5 A. That is correct.

6 Q. And the risk rating for all  
7 factors and each factor individually is low  
8 to moderate in each case, correct?

9 A. For the trademark, trade dress and  
10 design patent, that is correct.

11 Q. And in your trademark review it  
12 says two-stripe design is approved. Did you  
13 evaluate the likelihood of confusion between  
14 this particular shoe and the adidas shoe with  
15 the three stripes?

16 A. That is correct.

17 Q. Exhibit 432 is a request for legal  
18 advice for a comparison to a Skechers shoe.  
19 Did you participate in the shoe review for  
20 this particular shoe?

21 A. I believe I did.

22 Q. In -- did you prepare the remarks  
23 that are reflected on PSS 321540?

24 A. I would -- yes.

25 Q. And you assigned a moderate risk

1 on the trade dress factor, correct?

2 A. Yes.

3 Q. And why did you suggest changing  
4 the stitch lines or colored heel?

5 A. I don't have a specific  
6 recollection of that. I was -- the trade  
7 dress review would have been in comparison to  
8 the Skechers shoe, so from reading that I  
9 would believe that the Payless design was too  
10 close to the Skechers shoe on trade dress.

11 Q. If you -- if you take a look, for  
12 instance, at the picture that's on 321543,  
13 that doesn't provide you what you need to  
14 know to understand your comments?

15 A. Could you repeat the document  
16 number.

17 Q. Sorry. 321543.

18 A. 543. And does that provide me  
19 enough to make sense of my comments --

20 Q. Yes.

21 A. -- is that what you're saying?

22 Q. Yes.

23 A. Not that single picture.

24 Q. If you go back to the page before,  
25 321542, again, enough information to make



1 sense of your comment?

2 A. No.

3 Q. If you take a look at the picture  
4 on 321542.

5 A. Yes.

6 Q. The shoe on the left, you  
7 mentioned that you compared the Payless shoe  
8 to the Skechers shoe. Did you consider  
9 whether that -- those stitch lines raised any  
10 issues vis-a-vis the adidas shelltoe?

11 A. I don't believe so. I don't  
12 recall what the stitch lines pertain to. I  
13 believe that -- I'm trying to see if there  
14 was more than one shoe provided because the  
15 product review says "compared to Skechers, Lug  
16 Oxfords" and then in the parenthetical it  
17 says "2," and then also Lugz something else  
18 included, interpolator or interpreter included,  
19 and I don't know if I have -- so I don't  
20 know if it's simply reviewed just against the  
21 Skechers or if there was a Lugs  
22 interpretation that I was interpreting it  
23 against as well.

24 Q. But by taking a look at 321542  
25 doesn't cause you to recall that you

1 considered the adidas shelltoe in connection  
2 with this shoe as well?

3 A. I don't recall.'

4 Q. Exhibit 433 is another request for  
5 legal advice. Do you recall providing a shoe  
6 review in connection with this request for  
7 legal advice?

8 A. I don't have a specific  
9 recollection of providing advice but, I mean,  
10 it appears that advice was provided.

11 Q. Do you recall participating in  
12 connection with this particular shoe?

13 A. I do recall the shoe, yes.

14 Q. And in this situation the product  
15 review is to compare the Payless shoe to a  
16 Skechers shoe; is that correct?

17 A. That is correct.

18 Q. In connection with this shoe  
19 review, did you also compare the shoe to the  
20 adidas Country Ripple?

21 A. I don't recall comparing it  
22 specifically with a specific adidas shoe. I  
23 think I would have considered the two  
24 stripes, two parallel stripes with respect to  
25 adidas three stripes mark.